

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RUPERTO URIOSTEGUI,

Petitioner,

Case No. 1:08-cv-483

v

HON. JANET T. NEFF

CAROL HOWES,

Respondent.

OPINION

This is a habeas corpus petition filed pursuant to 28 U.S.C. § 2254. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation, recommending that this Court deny the petition as time-barred under 28 U.S.C. § 2244(d). The matter is presently before the Court on Petitioner's objections to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Final Order pursuant to FED. R. CIV. P. 58.

Petitioner argues that the Magistrate Judge erred in recommending that the petition be denied because it is time-barred by the statute of limitations. Petitioner argues that he is entitled to equitable tolling of the statute of limitations based on his lack of notice of the filing requirements, lack of knowledge of the limitations period, and his claim that he diligently pursued his rights after becoming aware of the limitations period.

Petitioner's argument is without merit. The Magistrate Judge properly concluded that the petition is time-barred. Petitioner argues that he did not have access to an attorney, that he was untrained in the law and unaware of the limitations period. The Magistrate Judge addressed these arguments in the Report and Recommendation and properly concluded that the circumstances do not warrant tolling of the limitations period in this case.

Having so determined, the Court must further determine pursuant to 28 U.S.C. § 2253(c) whether to grant a certificate of appealability as to the statute of limitations issue raised. *Slack v. McDaniel*, 529 U.S. 473 (2000); *Murphy v. Ohio*, 263 F.3d 466, 466-67 (6th Cir. 2001).

"When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a certificate of appealability should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. . . . Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further." *Slack*, 529 U.S. at 484. Upon review, this Court finds that reasonable jurists would not find the Court's procedural ruling debatable. A certificate of appealability will therefore be denied.

A Final Order will be entered consistent with this Opinion.

Date: February 2, 2009

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge

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FINAL ORDER

In accordance with the Opinion entered this date:

IT IS HEREBY ORDERED that the objections (Dkt 7) are DENIED and the Report and Recommendation of the Magistrate Judge (Dkt 6) is APPROVED and ADOPTED as the opinion of the Court.

IT IS FURTHER ORDERED that the petition for habeas corpus relief (Dkt 1) is DENIED for the reasons stated in the Report and Recommendation.

IT IS FURTHER ORDERED that a certificate of appealability pursuant to 28 U.S.C. § 2253(c) is DENIED.

Date: February 2, 2009

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge